

**CALIFORNIA GAMBLING CONTROL COMMISSION**

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DATE: August 27, 2002

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director  
Licensing and Compliance Division

SUBJECT: Report to Legislature for Distribution of Funds from Indian Gaming Revenue  
Sharing Trust Fund

**ISSUE:** *Can the Gambling Control Commission (Commission) make a distribution from the Indian Gaming Revenue Sharing Trust Fund (RSTF) to adjust the previous partial distributions made to actual amounts due and bring the quarterly distribution process current through June 30, 2002?*

The Commission has a fiduciary responsibility for the RSTF as Trustee of the RSTF per all of the Tribal-State Gaming Compacts (Compacts) as noted in Section 4.3.2(a)(ii). Additionally, the Commission shall make distributions in accordance with Sections 4.3.2.1(a) and (b).

The RSTF serves as the depository for gaming device licensing fees paid by Tribes that acquire and maintain gaming device licenses. The process for allocating licenses and the awarding thereof is outline in Section 4.3.2.2. This Section also provides for the amounts that shall be paid for license fees.

The State's Budget Act for FY2001-02 requires the Commission to submit a report to the Legislature containing specified information when appropriation augmentations are requested for the distribution of moneys from the RSTF.<sup>1</sup> Moreover, the Legislature needs to authorize the Commission to distribute funds from the RSTF (Gov. Code Section 12012.75). For FY2002-03 distributions, the California State Budget must first be enacted in order to have authority to make distributions for the current year. The Commission has initiated pursuing alternative distribution authority under the Budget Act for FY2001-02 and hopes to receive approval as soon as possible.

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<sup>1</sup> The Budget Act FY2001-02 (Chap. 106, Item #0855-101-0366(3)) specifies that "...the California Gambling Control Commission shall provide the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house that considers appropriations a report identifying (1) the methodology for determining a noncompact tribe; (2) a list of the noncompact tribes identified based on the commission's methodology; (3) a trust fund condition report including the amount of revenue received from each compact tribe; and (4) the amount of funds to be distributed to each noncompact tribe. Upon receiving additional expenditure authority for distributing funds under the trust fund, the commission shall submit that information to the chairpersons of the committees on a quarterly basis concurrent with the distribution of the funds to the noncompact tribes."

## **BACKGROUND:**

Since the last distributions were made, the Commissioners and Commission staff have been meeting and discussing the interpretation and implementation of the Compact related to gaming device licensing and license fee payment methodologies. A continuing dialog with numerous tribal officials has occurred over the last year and a half on these important issues. In doing this the Commission met with tribal officials throughout the state earlier in the year so that all positions could be heard. Numerous written comments were received and public testimony was heard at previous Commission meetings.

After completing these discussions and taking public testimony, the Commission adopted a number of policies at its hearings on May 29, June 12, and June 19, 2002. The objective of these policies is to achieve uniformity in the computation of payments into the RSTF and implementation of gaming device licensing as envisioned by the Compacts. A copy of the two staff reports from the above-mentioned hearings and a letter from the Commission dated June 26, 2002, that was sent to Compact Tribes addressing this is attached to the required report to the Legislature that is being presented to you for your review and approval.

To date the Commission has distributed \$39.9 million from the RSTF covering five fiscal quarters from July 1, 2000 through September 30, 2001. The distributions that have been made to date have been partial distributions of moneys in the RSTF pending the receipt, validation, and auditing of information related to license fee payments into the RSTF. These partial distributions amounted to \$100,000 per quarter per eligible tribe (i.e., up to \$500,000 per eligible tribe for these five quarters if the tribe was eligible for a distribution for all five quarters).

The current distribution that is being proposed for approval will adjust the previous partial \$100,000 per quarter distributions to the actual amount due. It will also make a distribution of the actual amounts in the fund for the three quarters ended December 31, 2001, March 31, 2002, and June 30, 2002 in fiscal year 2001-02. This will bring the quarterly distributions current on a quarterly basis.

It is important to note that the actual amounts being recommended for distribution may vary from tribal recipient to tribal recipient due to the differences of quarters that a tribe was eligible for distribution and the amount of money that was in the fund for a given quarter. For example the first quarter of distribution was the quarter that had the largest amount of license fee payments made to the RSTF. Therefore, tribes that were eligible for this quarter were entitled to a larger distribution on a cash basis. Subsequently, some tribes that received distributions in the initial quarters of distributions may have become ineligible for future distributions by no longer qualifying as a "Non-Compact Tribe" for distribution purposes per the definition in Section 4.3.2(a)(i). These tribes are entitled to a catch up distribution to adjust their previous partial distribution to the actual amount due.

Based on current updated quarterly eligibility and actual fund balances, some tribes have received overpayments in the first two partial distributions that were made. As noted in previous reports, future distributions are now being adjusted for any overpayments that may have been made, and overpayments that may be made are subject to refund by a tribe to the Commission. The current amount of overpayment to two tribes is \$132,406.

For these reasons, some tribes are now receiving larger one time final distributions for under-distributions that were made to them. Other tribes are not receiving any distributions, but rather are having their current distributions adjusted for previous overpayments that have been

made. It is expected that these situations will be fully resolved within the next regular quarterly distribution process.

These distributions are also being recommended on a conditional basis pending receipt of certification of the maximum number of gaming devices operated each quarter by each eligible tribe. A distribution will only be made after receipt of certification and eligibility is determined.

**RECOMMENDATION:** *It is recommended that the Commission (1) approve the attached report to the Legislature for a proposed \$15.47 million full distribution of the gaming device license fee payments not subject to refund, including moneys that may have been held in the RSTF reserve, and interest income in the RSTF to the listed tribes that are determined to be eligible in accordance with the Commission's identified methodology for determining a Non-Compact Tribe (see Attachment #1), (2) direct staff to implement a process to routinely collect all license fees that are due, and (3) further direct staff to initiate a process to regularly distribute moneys in the RSTF on a quarterly basis.*

**Attachment #1**

**Report on Distribution of Funds from  
the Revenue Sharing Trust Fund**

**CALIFORNIA GAMBLING CONTROL COMMISSION**

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August 27, 2002

Honorable Steve Peace, Chair  
Joint Legislative Budget Committee  
California State Capitol  
Sacramento, CA 95814

RE: Report on Distribution of Funds from the Indian Gaming Revenue Sharing Trust Fund

Dear Senator Peace:

Pursuant to Provisions 2 and 3 of Item 0855-101-0366 of the Budget Act of 2001 that establish a process by which funds held in the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) can be used to augment the \$1,000 amount appropriated by this item for distribution to non-compact tribes, we are submitting the following information. The California Gambling Control Commission (Commission) has requested approval from the Director of the Department of Finance to make an additional distribution of funds from the IGRSTF for the three quarters ended December 31, 2001, March 31, 2002, and June 30, 2002 in fiscal year 2001-02. Additionally, distributions for the five quarters ended from September 30, 2000, through September 30, 2001, that were previously made on a partial basis are now being adjusted to actual amounts due based on the amount of license fee revenues that were in the IGRSTF for those quarters.

Per the Budget Act of 2001, a report identifying four pieces of information for fiscal year 2001-02 are requested to be provided to the Legislature per the above noted Item 0855-101-0366. For fiscal year 2001-02 the Provision requesting the methodology for determining the amount of revenue each compact tribe is required to pay into the IGRSTF was not requested as it was previously for fiscal year 2000-01. This was the third piece of information of Provision 3 for the Budget Act of 2000. The information previously reported for this piece of information cited the Tribal-State Gaming Compact (Compact) regarding this matter. Since this additional distribution, augmentation, and budget appropriation includes retroactive distributions of moneys for periods which this information was previously requested, we will again include this information. Additionally, the Commission recently took action to resolve the matter of uniform payment methodology at its public hearings on May 29, June 12, and June 19, 2002. A copy of the two staff reports from these hearings and a letter from the Commission dated June 26, 2002, that was sent to Compact Tribes addressing this is attached for your reference. The information requested follows:

**1. The Methodology for Determining a Non-Compact Tribe**

Per Section 4.3.2(a)(i) of the Compact, the term "Compact Tribe" and "Non-Compact Tribe" is defined as:

A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that

are operating fewer than 350 Gaming Devices are “Non-Compact Tribes.” Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe (sic).

For this distribution from the IGRSTF, the Commission used the following procedures as the methodology for determining if a tribe is a Non-Compact Tribe:

- A. Identify all tribes in the State of California that are Federally-recognized based on information obtained from the U. S. Department of Interior, Bureau of Indian Affairs, and a legal opinion received from the State Attorney General's Office.
- B. Request that each tribe that is to receive a distribution certify the maximum number of gaming devices operated each quarter by completing and filing a Tribal-State Gaming Compact Gaming Device Certification Form (CGCC-C2000.02 and CGCC-C2000.03).
- C. Classify all tribes identified in step A based on the information obtained in Step B as either: 1) Compact Tribes operating 350 or more gaming devices, 2) Non-Compact Tribes as defined by the Compact, or 3) non-compacted gaming tribes.
- D. Classify all Non-Compact Tribes identified in part 2) of step C as eligible Non-Compact non-gaming tribes and Non-Compact gaming tribes that have submitted the requested certification form to the Commission.
- E. Prepare a list of Non-Compact Tribes based on the most recent information reported to the Commission.

## **2. A list of the Non-Compact Tribes Identified Based on the Commission's Methodology**

A list of all Non-Compact Tribes as identified by the methodology identified in item 1 above is attached as Exhibit 1.

## **3. The Methodology for Determining the Amount of Revenue Each Compact Tribe is Required to Pay into the Indian Gaming Revenue Sharing Trust Fund**

All Compact Tribes are required to make payments into the IGRSTF in accordance with the terms of the Compact as noted in Section 4.3.2.2(a)(2) and Section 4.3.2.2(e) of the Compact. These sections of the Compact read as follows, respectively:

Sec. 4.3.2.2(a)(2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

<b>Number of Licensed Devices</b>	<b>Fee Per Device Per Annum</b>
1-350	\$0
351-750	\$900
751-1250	\$1950

1251-2000

\$4350

Sec. 4.3.2.2(e) As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of \$1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund....

As noted on page one above, a copy of the letter dated June 26, 2002, from the Commission to Compact Tribes is attached summarizing the policies adopted that establish a uniform payment methodology.

**4. A Trust Fund Condition Report Including the Amount of Revenue Received From Each Compact Tribe**

A trust fund condition statement for the IGRSTF as of June 30, 2001 and 2002 is attached as Exhibit 2. A listing of the unaudited amount of revenue from each Compact Tribe as received by, or reported to, the Commission is attached as Exhibit 3.

**5. The Amount of Funds to be Distributed to Each Non-Compact Tribe**

The amount of funds to be distributed to each Non-Compact Tribe is listed in Exhibit 1 that is attached. The amount of distribution to each Tribe varies depending upon the quarter or quarters that they were eligible for and the amount of moneys in the IGRSTF for each quarter of distribution. The recommended distribution to each tribe listed in Exhibit 1 is subject to verification of eligibility and receipt of a Tribal-State Gaming Compact Gaming Device Certification Form (CGCC-C2000.02 and CGCC-C2000.03).

Sincerely,

John E. Hensley  
Chairman

Attachments

cc: Honorable Deirdre Alpert, Chair, Senate Appropriations Committee  
Honorable Darrell Steinberg, Chair, Assembly Appropriations Committee

**Exhibit 1****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Alturas Rancheria	\$188,385.42
Augustine Band of Mission Indians	188,385.42
Benton Paiute Reservation	188,385.42
Big Lagoon Rancheria	188,385.42
Big Pine	188,385.42
Big Sandy Band of Western Mono Indians	188,385.42
Bishop Paiute Tribe	188,385.42
Blue Lake Rancheria	188,385.42
Bridgeport Indian Colony	188,385.42
Buena Vista Rancheria	188,385.42
Cahto Indian Tribe of the Laytonville Rancheria	188,385.42
Cahuilla Band of Mission Indians	188,385.42
Campo Band of Mission Indians	138,034.21
Cedarville Rancheria	188,385.42
Chemehuevi Indian Tribe	188,385.42
Chicken Ranch Rancheria	188,385.42
Chico Rancheria	188,385.42
Cloverdale Rancheria	188,385.42
Cold Springs Rancheria	188,385.42
Colorado River Indian Tribes of the Colorado River Indian Reservation, AZ and CA	188,385.42
Cortina Rancheria	188,385.42
Cuyapaipe Band of Mission Indians	188,385.42
Dry Creek Rancheria	188,385.42
Elem Indian Colony	188,385.42
Elk Valley Rancheria	188,385.42
Enterprise Rancheria	188,385.42
Fort Bidwell Reservation	188,385.42
Fort Independence Reservation	188,385.42
Fort Mojave Indian Tribe of Arizona, California & Nevada	188,385.42
Greenville Rancheria	188,385.42
Grindstone Rancheria	188,385.42
Guidiville Rancheria	188,385.42
Hoopa Valley Tribe	188,385.42
Hopland Band of Pomo Indians	241,306.53
Inaja-Cosmit Reservation	188,385.42



**Exhibit 1 (continued)****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Ione Band of Miwok Indians	188,385.42
Jamul Indian Village	188,385.42
Karuk Tribe of California	188,385.42
La Jolla Band of Luiseno Indians	188,385.42
La Posta Band of Mission Indians	188,385.42
Lone Pine Reservation	188,385.42
Los Coyotes Reservation	188,385.42
Lytton Rancheria	188,385.42
Manchester Point Arena Rancheria	188,385.42
Manzanita Band of Mission Indians	188,385.42
Mesa Grande Band of Mission Indians	188,385.42
Middletown Rancheria Band of Pomo Indians	182,578.08
North Fork Rancheria	188,385.42
Pala Band of Mission Indians	182,578.08
Paskenta Band of Nomlaki Indians	188,385.42
Pauma/Yuima Band of Mission Indians	182,578.08
Picayune Rancheria	188,385.42
Pinoleville Reservation	188,385.42
Pit River Tribe	188,385.42
Potter Valley Reservation	188,385.42
Quartz Valley Reservation	188,385.42
Quechan Indian Nation	188,385.42
Ramona Band of Mission Indians	188,385.42
Redwood Valley Rancheria	188,385.42
Resighini Rancheria	188,385.42
Rincon Band of Mission Indians	241,306.53
Rohnerville Rancheria	188,385.42
Round Valley Reservation	188,385.42
San Pasqual Mission Indians	182,578.08
Santa Rosa Band of Mission Indians	188,385.42
Santa Ysabel Band of Mission Indians	188,385.42
Scotts Valley Rancheria	188,385.42
Sheep Ranch Rancheria	188,385.42
Sherwood Valley Rancheria	188,385.42
Shingle Springs Rancheria	188,385.42
Smith River Rancheria	188,385.42

**Exhibit 1 (continued)****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Stewarts Point Rancheria	188,385.42
Susanville Indian Rancheria	188,385.42
Table Bluff Reservation	188,385.42
Timba-sha Shoshone Tribe	188,385.42
Torrez-Martinez Desert Cahuilla Indians	188,385.42
Trinidad Rancheria	188,385.42
Tuolumne Band of Me-Wuk Indians	182,578.08
United Auburn Indian Community	188,385.42
Upper Lake Rancheria	188,385.42
Washoe Tribe of Nevada & California	188,385.42
Yurok Tribe	188,385.42
<b>Total</b>	<b>\$15,474,058.75 <sup>1</sup></b>

## Footnotes:

1. The total amount of distribution to each tribe is subject to audit and verification by the Commission. Future distributions may be adjusted for any overpayments or underpayments that may have been made. If a tribe is subsequently determined to be a "Compact Tribe" by definition of the Compact, and is therefore not eligible for future distributions, any overpayments that may be made are subject to refund by a tribe(s) to the Commission. The above distributions are being recommended for distribution on a conditional basis and are subject to verification of eligibility. Distributions will only be made after receipt of Tribal State Gaming Compact Gaming Device Certification Forms (CGCC-C2000.02 and CGCC-C2000.03) that indicates eligibility in accordance with the terms of the Compact.

## EXHIBIT 2

### CALIFORNIA GAMBLING CONTROL COMMISSION 0366 - INDIAN GAMING REVENUE SHARING TRUST FUND FUND CONDITION STATEMENT

For the periods ended June 30, 2001 and 2002

	2000 - 01	2001 - 02
BEGINNING BALANCE	\$ 0.00	\$ 18,044,691.17
REVENUES AND TRANSFERS		
Revenues:		
150300 Income from surplus money investments	649,400.41	1,756,874.83
216900 License fees held in trust	<u>42,195,290.76</u>	<u>12,845,181.32</u>
Totals, Revenues	\$ <u>42,844,691.17</u>	\$ <u>14,602,056.15</u>
Totals, Resources	\$ 42,844,691.17	\$ 32,646,747.32
EXPENDITURES		
Disbursements:		
	<u>24,800,000.00</u>	<u>15,100,000.00</u>
Totals, Expenditures	\$ <u>24,800,000.00</u>	\$ <u>15,100,000.00</u>
FUND BALANCE	\$ 18,044,691.17	\$ 17,546,747.32

<b>Exhibit 3</b>	
<b>Unaudited Amount of Revenue From Each Compact Tribe as Received by, or Reported to, the Commission through June 30, 2002</b>	
<b>Compact Tribe</b>	<b>Revenue Received or Reported</b>
Agua Caliente Band of Cahuilla Indians	\$2,088,406
Alturas Rancheria	0
Augustine Band of Mission Indians	437,500
Barona Band of Mission Indians	1,611,520
Berry Creek Rancheria	437,500
Big Sandy Rancheria	250,000
Big Valley Rancheria	500,000
Bishop Paiute Tribe	0
Blue Lake Rancheria	0
Buena Vista Rancheria	1,812,500
Cabazon Band of Mission Indians	775,775
Cahto Indian Tribe of the Laytonville Rancheria	0
Cahuilla Band of Mission Indians	125,000
Campo Band	500,000
Chemehuevi Indian Tribe	75,000
Chicken Ranch Rancheria	0
Colusa Rancheria	0
Cuyapaipe Band of Mission Indians	1,250,000
Dry Creek Rancheria	1,562,500
Elem Indian Colony	0
Elk Valley Rancheria	0
Hoopa Valley Tribe	0
Hopland Reservation	562,500
Jackson Rancheria	612,500
Jamul Indian Village	0
La Jolla Band of Luiseno Indians	0
Manchester Point Arena Rancheria	0
Manzanita Band of Mission Indians	0
Middletown Rancheria	187,500
Mooretown Rancheria	625,000
Morongo Band of Mission Indians	497,300
Pala Band of Mission Indians	3,459,375
Paskenta Band of Nomlaki Indians	375,000
Pauma/Yuima Band of Mission Indians	625,000
Pechanga Band of Mission Indians	833,750
Picayune Rancheria	1,562,500

<b>Exhibit 3 (continued)</b>	
<b>Unaudited Amount of Revenue From Each Compact Tribe as Received by, or Reported to, the Commission through June 30, 2002</b>	
<b>Compact Tribe</b>	<b>Revenue Received or Reported</b>
Pit River Tribe	0
Quechan Indian Nation	0
Redding Rancheria	437,500
Resighini Rancheria	0
Rincon Band of Mission Indians	5,090,625
Robinson Rancheria	0
Rohnerville Rancheria	0
Rumsey Rancheria	862,500
San Manuel Band of Mission Indians	1,282,500
San Pasqual Band of Diegueno Indians	2,062,500
Santa Rosa Rancheria	4,448,525
Santa Ynez Band	2,865,500
Sherwood Valley Rancheria	0
Shingle Springs Rancheria	0
Smith River Rancheria	0
Soboba Band of Mission Indians	1,261,250
Susanville Indian Rancheria	0
Sycuan Band of Mission Indians	5,065,330
Table Mountain Rancheria	4,237,438
Trinidad Rancheria	0
Tule River Reservation	427,500
Tuolumne Rancheria	312,500
Twenty-Nine Palms Band of Mission Indians	2,610,563
United Auburn Indian Community	812,500
Viejas Band of Kumeyaay Indians	2,117,675
<b>Total</b>	<b>\$54,660,532<sup>1</sup></b>

Footnotes:

1. See Exhibit 2 for a copy of a fund condition statement for the Fund as of June 30, 2002, which is the most recent quarter-end for which a distribution has been recommended for payment. Included in the total revenues and resources reported is interest of \$2,786,217. Of this interest amount, \$379,942 was received from Sides Accountancy Corporation, but was posted as licenses fees held in trust due to the lack of disclosure with the initial remittances to the Commission as trustee.